

May 17, 2004

## ELIGIBILITY FOR NURSING HOME CARE

**1. PURPOSE:** This Veterans Health Administration (VHA) directive issues eligibility requirements for nursing home care that the Department of Veterans Affairs (VA) is mandated to provide for certain veterans through December 31, 2008.

### 2. BACKGROUND

a. Public Law 106-117, The Veterans' Millennium Health Care and Benefits Act, amended VA's statutory authority for providing nursing home care to eligible veterans. The law requires that:

(1) The Secretary of Veterans Affairs must ensure that the staffing and level of extended care services provided nationally in VA facilities during any fiscal year is not less than the staffing and level of such services provided nationally in VA facilities during Fiscal Year 1998.

(2) VHA provide nursing home care to any veteran in need of such care, and who:

(a) Is seeking nursing home care for a service connected (SC) disability, or

(b) Is rated 60 percent SC and unemployable; or

(c) Is rated 60 percent SC and Permanent and Total Disabled (P&T).

(3) VHA provide nursing home care for any condition if the veteran has a combined SC disability rating of 70 percent or more.

(4) VHA ensure that a such a veteran (see subpars. 2a(2) and 2a(3)), who continues to need nursing home care, is not, after placement in a VA nursing home, transferred from the facility without the consent of the veteran, or, in the event the veteran cannot provide informed consent, the representative of the veteran. Veterans may be discharged from a VA Nursing Home Care Unit (NHCU) without consent when nursing home care is no longer needed; for example, if the veteran's needs can be best met at home.

**NOTE:** *Nothing in the law authorizes VHA to displace, transfer, or discharge a veteran who was receiving nursing home care in a Department nursing home as of November 30, 1999.*

b. Public Law 108-170, The Veterans Health Care, Capital Asset, and Business Improvement Act of 2003, dated December 6, 2003, extended the requirement that VA provide nursing home care to the veterans described in subparagraphs 2a(2) and 2a(3) from December 31, 2003, through December 31, 2008.

**THIS VHA DIRECTIVE EXPIRES DECEMBER 31, 2008**

## VHA DIRECTIVE 2004-019

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**3. POLICY:** It is VHA policy to extend the requirement to provide nursing home care to the veterans described in subparagraphs 2a(2) and 2a(3) for 5 years, until December 31, 2008.

**NOTE:** *Veterans with combined ratings equal to, or greater than, 70 percent are covered in this mandated group for nursing home care benefits.*

### 4. ACTION

a. **Medical Center Director.** The medical center Director is responsible for ensuring that:

(1) Nursing home care is provided, either directly or through contracts when clinically indicated, to a veteran in need of such care, who:

- (a) Is seeking nursing home care for a SC disability, or
- (b) Is rated 60 percent SC and unemployable, or
- (c) Is rated 60 percent SC and P&T, or
- (d) Has a combined SC disability rating of 70 percent or more.

(2) Nursing home care is provided based on available resources, either directly or through contracts when clinically indicated, to all other eligible veterans in need of nursing home care.

(3) Veterans are placed in Home and Community-based Care (HCBC) when clinically appropriate, and veterans receiving VA NHCU or Community Nursing Home (CNH) care are transferred to appropriate assisted living or home and community-based care settings when nursing home care, at any level, is no longer clinically indicated.

(4) The need for nursing home care is determined based on a comprehensive interdisciplinary clinical assessment.

(5) After admission to a VA NHCU, veterans described in subparagraph 4a(1), are not transferred or discharged from a VA NHCU unless:

- (a) The patient no longer needs any nursing home care; or
- (b) The patient, or the patient's representative, has given informed consent to the discharge or transfer.

(6) VA NHCUs admit, as a matter of firm priority, patients who meet the following clinical and/or programmatic criteria:

- (a) Post-acute patients,
- (b) Patients who cannot be adequately cared for in CNH or HCBC, and

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(c) Those patients who can be cared for more efficiently in VA NHCUs.

(7) The facility maintains an active CNH Program.

b. **CNH Program.** When veterans are placed in CNHs outside the Veterans Integrated Service Network (VISN), the VA facility or VISN making the placement must authorize care and must obligate funds for a period of time not to exceed 3 months. If CNH care is expected to exceed 3 months and placement is for a veteran described in subparagraph 4a(1), veteran responsibility transfers to the VA facility and/or VISN where the veteran is placed. It is the responsibility of the placing facility to contact the receiving VA facility to arrange transfer of CNH obligations, including veteran follow-up and financial requirements after the initial 3 months.

***NOTE:** Nothing in this VHA Directive may be construed as authorizing or requiring that a veteran who was receiving nursing home care in a VA NHCU on November 30, 1999, be displaced, transferred, or discharged from the VA NHCU.*

## 5. REFERENCE

- a. Title 38 United States Code (U.S.C.) 1710A.
- b. Public Law 108-170 dated December 6, 2003.
- c. Title 38 Code of Federal Regulations (CFR) Section 4.16.

**6. FOLLOW UP RESPONSIBILITY:** The Chief Business Office (163) is responsible for the contents of this directive. Questions may be addressed to 202-254-0406.

**7. RESCISSION:** VHA Directive 2002-077 is rescinded. This VHA Directive will expire December 31, 2008.

S/ Art Hamerschlag for  
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Acting Under Secretary for Health

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